



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

DEC 10 2010

William J. Cadigan, Esq.  
Law Office of William J. Cadigan  
111 N. Canal Street, Suite 394  
Chicago, IL 60606

RE: MUR 6292  
Joe Walsh for Congress Committee, Inc.,  
and Helene M. Miller-Walsh, in her  
official capacity as treasurer  
Joe Walsh

Dear Mr. Cadigan:

On May 20, 2010, the Federal Election Commission notified your clients, Joe Walsh for Congress Committee Inc., and Helene M. Miller Walsh, in her official capacity as treasurer ("the Committee") and Joe Walsh of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On December 1, 2010, the Commission found, on the basis of the information in the complaint, information provided by your clients, and other available information, that there is no reason to believe that the Committee violated 2 U.S.C. § 434(b) in connection with in-kind contributions from Bruce Donnelly, that the Committee violated 2 U.S.C. §§ 441f and 441a(f), and that Joe Walsh violated 2 U.S.C. § 441f. In the exercise of its prosecutorial discretion, the Commission also dismissed the allegations that the Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.11 and 116.5 in connection with the reporting of certain debts, an in-kind contribution, and an advance. Finally, the Commission dismissed an allegation raised by the Office of General Counsel that respondents violated 2 U.S.C. § 433(a) for failing to timely file a Statement of Organization. Accordingly, the Commission closed the file in this matter on December 1, 2010.

The Commission cautions the Committee that debts, in-kind contributions, and staff advances must be timely reported in accordance with 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.11 and 116.5, and that a Statement of Organization must be filed no later than 10 days after a candidate has designated a principal campaign committee in accordance with 2 U.S.C. § 433(a). The Commission also cautions the Committee that to the extent that the Committee's debt exceeds \$500, it should be reported accordingly. See 11 C.F.R. § 116.5(b). The Committee should amend its disclosure reports if necessary.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's

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Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Roy Q. Lockett

Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Joe Walsh for Congress Committee, Inc.,  
and Helene M. Miller-Walsh, in her official  
capacity as treasurer  
Joe Walsh

**MUR: 6292**

**I. INTRODUCTION**

This matter was generated by a complaint filed by Richard Cape, a former campaign employee, alleging that the Joe Walsh for Congress Committee, Inc., and Helene M. Miller-Walsh, in her official capacity as treasurer ("JWCC"): (1) failed to pay for or disclose as debts or in-kind contributions legal services provided to, and automated phone calls made on behalf of, JWCC; (2) failed to pay for or disclose a debt for primary election night party expenses; and (3) failed to disclose as an in-kind contribution poll results given to it but paid for by a third party. The complaint also alleges that JWCC and the candidate, Joe Walsh, accepted excessive contributions from family members funneled to the campaign through multiple donors.

Based on our review of the available information, the Commission exercises its prosecutorial discretion and dismisses allegations that JWCC violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.11 and 116.5 by failing to disclose certain transactions, but issues a letter of caution to it; dismisses as a matter of prosecutorial discretion JWCC's violation of 2 U.S.C. § 433(a) for failing to timely file a Statement of Organization, but also cautions it as to that violation; finds no reason to believe that JWCC violated 2 U.S.C. § 434(b) by failing to report in-kind contributions in the form of auto-calls from a supporter; and finds no reason to believe that JWCC violated 2 U.S.C. §§ 441a(f) and 441f in connection with the allegation that it accepted excessive contributions in the names of others. The Commission also finds no reason to believe that Joe Walsh violated 2 U.S.C. § 441f.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Reporting Violations**

3 **1. Background**

4 The complaint first alleges that JWCC failed to pay for or disclose as a debt or in-kind  
5 contribution legal services provided by a Chicago law firm from December 2009 through May  
6 2010, and it attaches letters and emails relating to those services. Complaint at 1. The  
7 documents indicate the law firm, among other things, represented JWCC in a lawsuit filed by  
8 Walsh's first campaign manager, Keith Liscio, seeking payment of \$20,000 for services he  
9 provided to the campaign, and advised JWCC concerning a cease and desist letter that counsel  
10 for singer Joe Walsh had sent JWCC for using a song written by the singer in a campaign video.  
11 Complaint at 8-9.

12 The complaint also asserts that JWCC did not disclose any payment made to, or a debt  
13 owed to, Dock's Bar and Grill for costs associated with a February 2, 2010, primary election  
14 night party held there, including the cost of room rental, appetizers, and a candidate preparation  
15 room. Complaint at 1.

16 The complaint further alleges that JWCC failed to pay for or disclose auto-calls and a poll  
17 conducted by Bryan Javor. Javor appears to have provided at least some of the services to  
18 JWCC through a start-up company called ReachFly.<sup>1</sup> See *YR Spotlight on Bryan Javor,*  
19 *Outgoing Chairman*, McHenry County Blog, March 14, 2010, available at  
20 <http://mchenrycountyblog.com/2010/03/14/yr-spotlight-on-bryan-javor-outgoing-chairman/>.

21 The complaint maintains that Javor conducted auto-calls directly for JWCC on February 1, 2010,  
22 and conducted a poll for a Walsh primary opponent, Christopher Geissler, and gave the poll

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<sup>1</sup> ReachFly registered as an LLC in Illinois on March 15, 2010.

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1 results to JWCC before giving them to Geissler. Emails attached to the complaint confirm Javor  
2 conducted phone calls on February 1, 2010, and that he was to conduct a poll on  
3 January 25 or 26, 2010. Complaint at 10-11.

4 In response, JWCC acknowledges that it retained counsel to help it set up its legal and  
5 operating structures and to address the types of issues reflected in the complaint attachments.

6 JWCC Response at 2. JWCC asserts that the law firm issued invoices for its services on  
7 March 15 and April 15, 2010, acknowledged that it had not yet paid the invoices, and stated that  
8 it would disclose the debts owed in an amended 2010 April Quarterly Report and in its upcoming  
9 2010 July Quarterly Report. *Id.* After filing its response to the complaint, JWCC amended its  
10 2010 April Quarterly Report disclosing a \$2,138.50 debt to the firm for "legal fees to dismiss"  
11 the Liscio lawsuit. It filed two amendments to its 2010 July Quarterly Report. The first  
12 amendment, filed on July 15, 2010, disclosed two additional debts to the firm consisting of  
13 \$3,132.75 for "legal fees dealing with FEC and incorporation" and \$1,350 for fees related to a  
14 court hearing in the Liscio lawsuit. The second amendment, filed on October 13, 2010, disclosed  
15 a fourth debt to the firm of \$4,939.81 for "legal fees in defense of disputed debt and FEC issue."

16 JWCC also acknowledges that Walsh personally paid for election night party expenses,  
17 including a \$200 deposit to secure restaurant space for the party and approximately \$825 for  
18 food, refreshments, and related expenses. JWCC Response at 3. JWCC also acknowledges that  
19 these payments were not reflected in its 2010 April Quarterly Report. *Id.* Following its  
20 response, JWCC amended its 2010 April Quarterly Report, reporting Walsh's \$854.25 staff  
21 advance as a memo entry on Schedule A for "Victory Night celebration on 2/2/10-to be  
22 reimbursed." It also reported that amount as a debt owed to Walsh on Schedule D since JWCC

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1 had not yet reimbursed him. JWCC's disclosure reports do not reflect the payment of a deposit,  
2 which presumably could have been applied toward the total bill.

3 As for the auto-calls and poll conducted by Javor, JWCC "does not dispute" that it  
4 engaged Javor's company, ReachFly, to perform auto calls in the days leading up to the primary.  
5 JWCC Response at 2. It maintains that ReachFly "subsequently" issued an invoice to JWCC and  
6 that its payment of the invoice would be reported in the 2010 July Quarterly Report. *Id.*

7 With respect to polling, JWCC says the allegation that it received a poll conducted by  
8 Javor for one of Walsh's opponents "simply is not true." JWCC Response at 3. It represents that  
9 it engaged ReachFly on January 26, 2010, to conduct a limited poll to test name recognition and  
10 geographic areas of strength and weakness to permit it to more effectively target its efforts in the  
11 closing days of the primary campaign. *Id.* JWCC again maintains that ReachFly did not issue an  
12 invoice for the poll during the 2010 April Quarterly reporting period but did so "subsequently"  
13 and that it would report expenditures for these services in the 2010 July Quarterly Report. *Id.*

14 Bryan Javor states that it is JWCC's responsibility to report any contributions he made to  
15 it. He denies, however, that he gave poll results to another candidate. Christopher Geissler, the  
16 Walsh primary opponent whose poll results were allegedly given to JWCC, states that he has no  
17 knowledge of who provided services to Walsh but is interested in how phone survey information  
18 compiled by a consulting firm engaged by his campaign committee was furnished to an  
19 opponent.

20 After JWCC submitted its response, it amended its 2010 April Quarterly Report to reflect  
21 a January 26, 2010, \$550 in-kind contribution from Javor for "in-kind auto calls" and a  
22 \$1,081.27 debt owed to ReachFly for "tech assistance and phone calls." It also disclosed three

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1 disbursements to ReachFly in the 2010 July Quarterly Report, all for "technology consulting":  
2 \$1,334, \$1,500 and \$1,250 on May 1, May 21, and June 1, 2010, respectively.

3 JWCC appears to have reported the auto-calls and limited poll conducted by Javor and  
4 ReachFly in its amended 2010 April Quarterly Report as an in-kind contribution and debt rather  
5 than in its 2010 July Quarterly Report, presumably because the underlying services were  
6 provided in the week leading up to the February 2, 2010, a period covered by the 2010 April  
7 Quarterly Report. The three disbursements to ReachFly disclosed in the 2010 July Quarterly  
8 Report appear to relate to services Javor provided at a later time since their purpose is listed as  
9 "technology and consulting" rather than auto calls or phone calls.<sup>2</sup>

10 **2. Analysis**

11 A political committee must report the identification of each person who makes a  
12 contribution aggregating in excess of \$200 per election cycle. 2 U.S.C. § 434(b)(3). The  
13 payment by an individual from personal funds for costs incurred in obtaining goods and services  
14 that are used by or on behalf of a political committee is a contribution unless specifically  
15 exempted under the Act and Commission regulations. 11 C.F.R. § 116.5(b). Additionally, an  
16 obligation arising from such a payment shall be reported as a debt until it is reimbursed.  
17 11 C.F.R. § 116.5(c). Further, a political committee must report the amount and nature of  
18 outstanding debts and obligations it owes. 2 U.S.C. § 434(b)(8). A debt or obligation in excess  
19 of \$500 must be reported as of the date on which the debt or obligation is incurred. 11 C.F.R.  
20 § 104.11(b). A debt or obligation of \$500 or less must be reported as of the time the payment is  
21 made or not later than 60 days after the obligation is incurred, whichever comes first. *Id.* If the

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<sup>2</sup> Bruce Donnelly, who hired Javor to conduct auto calls after the primary, has stated that Javor was invited to join the JWCC campaign staff after complainant resigned in May 2010, which supports this conclusion. *See supra* at p.8.

1 exact amount of a debt or obligation is not known, the disclosure report shall state that the  
2 amount reported is an estimate. *Id.*

3 Based on the available information, JWCC failed to timely report debts it owed to a law  
4 firm. In December 2009, the law firm began representing JWCC with respect to the Liscio  
5 lawsuit, which included an exchange of phone calls and correspondence and two court  
6 appearances during the period covered by the 2010 April Quarterly Report. Complaint at 8.  
7 Because the legal services provided to JWCC regarding Liscio's lawsuit exceeded \$500 as of  
8 March 31, 2010, the end of the 2010 April Quarterly reporting period, JWCC should have  
9 reported that debt in its original 2010 April Quarterly Report. In addition, Illinois Secretary of  
10 State records show that JWCC was incorporated on February 22, 2010, indicating the firm's  
11 work related to JWCC's legal structure occurred during the 2010 April Quarterly reporting  
12 period. Thus, the portion of the \$3,131 debt to the firm JWCC reported in the 2010 July  
13 Quarterly Report attributable to the firm's incorporation work should also have been reported in  
14 the 2010 April Quarterly Report to the extent it exceeded \$500. All told, JWCC failed to report  
15 debts for legal services provided through March 31, 2010, of at least \$2,183.50 but less than  
16 \$5,721. JWCC appears to have timely disclosed two additional law firm debts in its original  
17 2010 July Quarterly Report; however it did not disclose a fourth law firm debt of \$4,939 until it  
18 amended that report on October 13, 2010.

19 With respect to the other reporting issues, JWCC failed to disclose in its original 2010  
20 April Quarterly Report an \$854 advance from Walsh for the cost of a primary election night  
21 party, a \$550 in-kind contribution from Bryan Javor for auto-calls, and a \$1,081.27 debt owed to  
22 Javor's firm, ReachFly, for phone calls made on JWCC's behalf.

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1 Even though JWCC failed to disclose the transactions discussed above, the Commission  
2 is exercising its prosecutorial discretion and dismissing the allegations that JWCC violated  
3 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.11 and 116.5. *See Heckler v. Chaney*, 470 U.S. 821, 831  
4 (1985). The transactions complained of have now been disclosed and were not reportable in an  
5 election-sensitive report, and they involved relatively low dollar amounts.

6 Although not addressed in the complaint, an examination of JWCC's disclosure reports  
7 shows that JWCC failed to timely file a Statement of Organization. Joe Walsh filed a Statement  
8 of Candidacy on October 30, 2009, designating JWCC as his principal campaign committee. A  
9 principal campaign committee must file a Statement of Organization no later than 10 days after  
10 designation. 2 U.S.C. § 433(a). JWCC did not file a Statement of Organization until January 13,  
11 2010. Because the late-filed Statement of Organization did not affect JWCC's timely filing of its  
12 initial disclosure report, the 2010 Pre-Primary Report, on January 22, 2010, and the Commission  
13 is not pursuing JWCC for other violations, the Commission is exercising its prosecutorial  
14 discretion and dismissing JWCC's violation of 2 U.S.C. § 433(a). *See Heckler v. Chaney* at 831.

15 The Commission is also issuing a cautionary letter to JWCC because it violated  
16 2 U.S.C. § 433(a) and effectively admits to violating 2 U.S.C. § 434(b) through its amendments.  
17 In addition, even though JWCC has now disclosed the transactions at issue, JWCC appears to  
18 have disclosed them only in response to a complaint filed by a former staffer. As it appears that  
19 part of the \$3,132.75 debt to the law firm reported in the 2010 July Quarterly Report involved  
20 work relating to JWCC's incorporation and performed during the 2010 April Quarterly reporting  
21 period, the Commission is also advising JWCC to review the law firm debt and amend its  
22 disclosure reports accordingly.

**B. Automated Phone Calls Paid for by Bruce Donnelly**

**1. Background**

The complaint also alleges that JWCC gave phone data to Bryan Javor to assist him in conducting numerous automated phone calls paid for by Bruce Donnelly to increase Joe Walsh's name recognition and help get out the vote for him, and JWCC failed to report the expenditures for these calls as an in-kind contribution from Donnelly. The complaint does not provide a time frame for these auto-calls, and none of the documents provided shed further light on this allegation. According to Donnelly, these phone calls were made after the primary election.

Donnelly acknowledges that he used Bryan Javor's marketing services in March, April, and May 2010 to make a limited number of local auto-calls, and that complainant, while employed by JWCC, provided Javor with some of the phone data for the calls. Donnelly states that the auto-calls were made to promote attendance at free, open meetings of a new local group of independent voters that encourages voters to become better informed about issues. Some of the calls mentioned that Walsh was among the invited speakers at the meetings, but Donnelly maintains that the auto-calls did not solicit funds for Walsh or the group, and the meetings were not fundraisers for Walsh. Donnelly believes that none of his personal spending with respect to the auto-calls should be attributed to JWCC as an in-kind contribution as he independently selected who to call based on his own criteria for marketing the group, and JWCC exercised no control over the content of the calls, the group's meeting agenda, or his use of Javor, whose services he used because it was one of the cheapest options to promote the group. Even if his spending were deemed to be an in-kind contribution, Donnelly maintains the value would have been within his contribution limit for the general election. JWCC's reports confirm that Donnelly had made only one \$1,500 primary election contribution as of June 7, 2010.

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JWCC suggests that Mr. Donnelly's activities did not constitute coordinated communications, and thus an in-kind contribution, as Donnelly states that "he did not coordinate the timing or content of the [auto-] calls" with the JWCC "or its agents," and the purpose of the calls was "not to advocate for Joe Walsh's election of Joe Walsh."<sup>3</sup> JWCC Response at 2. Nonetheless, JWCC states that it determined that the value of the phone data it supplied to Javor was \$70, and it will disclose this amount as an-kind contribution to Donnelly's organization in JWCC's 2010 July Quarterly Report. *Id.* at 3.

Following submission of its response, JWCC reported an-kind contribution of \$70 to Bruce Donnelly in its amended 2010 April Quarterly Report rather than its 2010 July Quarterly Report, presumably signifying that the phone data was provided to Javor before March 31, 2010. In addition, in its 2010 July Quarterly Report, JWCC reported six in-kind general election contributions, totaling \$1,702, from Bruce Donnelly in May and June for in-kind automated calls, in-kind meeting room rentals and in-kind printed materials.<sup>4</sup>

## 2. Analysis

The Act provides that a person may not make contributions that aggregate in excess of the statutory limitation with respect to any election for Federal office. 2 U.S.C. § 441a(a)(1)(A). In the 2010 election cycle, the individual contribution limit is \$2,400. Expenditures made by any

<sup>3</sup> Commission regulations provide that a communication is considered coordinated with a candidate, and thus, an in-kind contribution to the candidate's political committee, if it is paid for by a person other than a candidate and meets certain content and conduct standards. See 11 C.F.R. § 109.21(a). A communication satisfies the content standards if, for example, it is a public communication that expressly advocates the election or defeat of a clearly identified candidate. See 11 C.F.R. § 109.21(c)(3). A communication satisfies the conduct standard if, for example, a candidate or a political committee is materially involved in decisions regarding the content, intended audience, or frequency or timing of the communication. See 11 C.F.R. § 109.21(d)(2).

<sup>4</sup> Donnelly's in-kind contributions include: \$265.80 and \$304.40 in in-kind automated calls on May 2, 2010, and June 9, 2010, respectively; \$330 in in-kind meeting room rentals on each of May 4 and June 15, 2010; and \$400 and \$72 in in-kind printed material on June 23 and 30, 2010, respectively.

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1 person in cooperation, consultation or concert with, or at the request or suggestion of a candidate  
2 or a candidate's political committee shall be considered a contribution. 2 U.S.C.  
3 § 441a(a)(7)(B)(i). The Act prohibits a political committee from accepting a contribution in  
4 excess of the Act's limitations. 2 U.S.C. § 441a(f). Political committees must file periodic  
5 reports that disclose contributions from persons other than political committees and the  
6 identification of each person who makes contributions aggregating in excess of \$200 within an  
7 election cycle. 2 U.S.C. §§ 434(b)(2)(A) and (3).

8 Although there appears to be tension between what Donnelly has stated about his  
9 activities and JWCC's post-response actions, the Commission finds that there is no reason to  
10 believe that any violation occurred with respect to Donnelly's phone calls. Mr. Donnelly  
11 indicates that he engaged Mr. Javor to conduct auto-calls to promote meetings featuring Walsh  
12 after the primary election, and Donnelly's newly reported in-kind contributions—totaling  
13 \$1,702—were less than the \$2,400 contribution limit for the general election. Thus, it does not  
14 appear that JWCC accepted excessive contributions in connection with the general election. In  
15 addition, because the in-kind contributions were apparently made in May and June 2010, they  
16 were timely reported in the 2010 July Quarterly Report. Therefore, the Commission finds no  
17 reason to believe that Joe Walsh for Congress Committee violated 2 U.S.C. § 441a(f) or 2 U.S.C.  
18 § 434(b).

19 C. **Alleged Excessive Contributions Made by Candidate's Family**  
20 **Through Others**  
21

22 1. **Background**

23 The complaint also alleges that Walsh received large contributions in excess of the  
24 \$2,400 per-election contribution limit from family members that were funneled to the campaign  
25 through multiple donors "and questionable bookkeeping by" JWCC's treasurer, Helene Miller-

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Walsh, who is Walsh's wife. Complaint at 1. The complainant does not appear to have personal knowledge of the facts underlying his allegation since he couches it in terms of his belief. Instead, he refers to an unnamed individual who can confirm the allegation but who is "reluctant to release information of checks and routing information due to fear of prosecution on his behalf." *Id.* The complainant states that he will immediately forward information to the Commission if it becomes available. *Id.* He has not done so.

JWCC characterizes the allegation as "a vague and non-specific reference to other violations" related to contribution limits and states that it can "offer no response to these unsubstantiated allegations" without additional information. JWCC Response at 4.

## 2. Analysis

No person shall make a contribution in the name of another person or knowingly permit his or her name to be used to make such a contribution. 2 U.S.C. § 441f. No person shall knowingly accept a contribution made by one person in the name of another. *Id.*

The complainant does not appear to have personal knowledge that excessive contributions from Walsh family members were funneled through others to the campaign, and he does not provide specific facts about the identity of the "multiple" contributors through whom family contributions were allegedly funneled, the identity of the family members allegedly involved, or how questionable bookkeeping may have facilitated any such scheme. Nor does he identify the individual whom he says can confirm the allegation. Under 11 C.F.R. § 111.4(d)(3), a complaint should contain a clear and concise recitation of the facts that describe a violation of the Act or Commission regulations. *Id.* The complaint lacks sufficient specific facts, such as the identities of any excessive family contributors or conduits, to establish a violation of section 441f. Moreover, the only identified source of information that could give rise to a belief in the

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1 rise to a belief in the truth of the allegations is a reference to unspecified checks and routing  
2 numbers that appear to be accessible to an unidentified individual.

3       Accordingly, in the absence of any further information from the complainant with respect  
4 to this allegation, the Commission has determined to find no reason to believe that Joe Walsh for  
5 Congress Committee and Joe Walsh violated 2 U.S.C. § 441f.

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